

Explanatory Memorandum to the Code of Practice on Quality Assurance and Performance Management, Escalating Concerns, and Closure of Regulated Care and Support Services 2026 under the Social Services and Well-being (Wales) Act 2014

This Explanatory Memorandum has been prepared by Health Social Care and Early Years Department and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Code of Practice on Quality Assurance and Performance Management, Escalating Concerns, and Closure of Regulated Care and Support Services 2026. I am satisfied that the benefits justify the likely costs.

Dawn Bowden MS
Minister for Children and Social Care

1 December 2025

1. Description

- 1.1 The Code of Practice on Quality Assurance and Performance Management, Escalating Concerns, and Closure of Regulated Care and Support Services 2026 ('Code of Practice') sets out the requirements and guidelines which local authorities must act in accordance with when exercising their social services functions in relation to quality assurance and performance management, escalating concerns and closure of regulated services under the Social Services and Well-being (Wales) Act 2014 ('the 2014 Act').
- 1.2 The Code of Practice also constitutes guidance under section 169 of the 2014 Act and guidance under section 2 of the National Health Service (Wales) Act 2006 ('the 2006 Act').
- 1.3 To ensure this Code of Practice has comparable force in relation to Local Health Boards and NHS trusts in Wales, the Welsh Ministers will direct Local Health Boards and NHS trusts in Wales under powers set out in the 2006 Act to exercise their functions in accordance with the requirements contained within this Code of Practice when exercising their respective functions.
- 1.4 This Explanatory Memorandum relates to the Code of Practice which is concerned with care and support services that are registered with, and regulated by, Care Inspectorate Wales. For the purposes of the Code of Practice, the term 'care and support' has the same meaning as in section 3 of the Regulation and Inspection of Social Care (Wales) Act 2016 ('the 2016 Act')

2. Matters of special interest to the Legislation, Justice and Constitution Committee

- 2.1 None.

3. Legislative background

- 3.1 Section 145 of the 2014 Act gives the Welsh Ministers the power to issue, and from time-to-time revise, one or more codes on the exercise of social services functions. A code may impose requirements, and may include guidelines setting out aims, objectives and other matters. A local authority must, when exercising social services functions, act in accordance with any relevant requirements contained in a code and have regard to any relevant guidelines contained in it.
- 3.2 The Code of Practice also constitutes guidance under section 169 of the 2014 Act and guidance under section 2 of the 2006 Act.
- 3.3 Section 12 of the 2006 Act gives Welsh Ministers the power to direct Local Health Boards about the exercise of its functions. Directions issued under this section can require Local Health Boards to exercise their relevant

functions in accordance with the requirements contained within the Code of Practice.

- 3.4 Section 19 of the 2006 Act sets out the power for the Welsh Ministers to issue Directions to NHS trusts in Wales about its exercise of any functions. Directions issued under this section can require NHS trusts in Wales to exercise their functions in accordance with the requirements set out in the Code of Practice.
- 3.5 The Code of Practice follows the Senedd's draft negative procedure and it is proposed it will be brought into force on 31 March 2026 with the making of an Appointed Day Order.

4. Purpose and intended effect of the legislation

- 4.1 The purpose of the Code of Practice is to place requirements on local authorities when exercising their social services functions in relation to quality assurance and performance management, escalating concerns and closure of regulated services under the 2014 Act. The Code of Practice also offers guidelines and guidance to local authorities on these matters.
- 4.2 The Code of Practice also provides guidance to Local Health Boards and NHS trusts in Wales under the 2006 Act, as commissioners of regulated care and support services. Directions will be issued to Local Health Boards and NHS trusts in Wales requiring them to exercise their functions in accordance with the relevant provisions of the proposed Code of Practice to ensure there is comparable legal force between local authorities and NHS bodies in Wales.
- 4.3 The Code of Practice relates to the commissioning of the following regulated care and support services registered with Care Inspectorate Wales under the 2016 Act:
- Care home services (for adults and children, including those providing nursing care),
 - Secure accommodation services,
 - Residential family centre services,
 - Fostering services,
 - Adoption services,
 - Adult placement services,
 - Advocacy services,
 - Domiciliary support services, and
 - Special school residential services.

4.4 The Code of Practice includes information on the respective roles and responsibilities of regulated service providers, Care Inspectorate Wales and Social Care Wales.

4.5 The Code of Practice should be read in conjunction with *The National Framework for the Commissioning of Care and Support in Wales: Code of Practice*¹ which came into force on 1 September 2024 (and any subsequent versions).

4.6 The Code of Practice may be used as good practice guidance in relation to regulated care and support services which have not been commissioned by a local authority, Local Health Board or NHS trust in Wales, and non-regulated services provided on behalf of the local authority by the third sector and the private sector.

4.7 The Code of Practice covers:

- Quality assurance and performance management of regulated care and support services.
- Dealing with escalating concerns in regulated care and support services.
- Strategic decommissioning of care and support services.
- Closure of regulated care and support services.
- Roles and responsibilities.
- Recommended structures, processes, and actions.

5. Consultation

5.1 A 12-week public consultation was undertaken on the Code of Practice between 7 April 2025 and 30 June 2025. The consultation was drawn to the attention of key stakeholders including local authorities, Local Health Boards, NHS trusts in Wales, Regional Partnership Boards, sector representative bodies, Older People's Commissioner, Children's Commissioner, Care Inspectorate Wales and Social Care Wales. The consultation was highlighted through social media and the Care Inspectorate Wales newsletter. The consultation response document can be found [here](#).

¹ [The National Framework for the Commissioning of Care and Support in Wales: Code of Practice](#)

PART 2 - REGULATORY IMPACT ASSESSMENT

6. Options

Two options have been considered in the analysis of the costs, benefits, and risks of issuing a Code of Practice on quality assurance and performance management, escalating concerns, and closure of regulated care and support services. These are:

Option one: do nothing – retain the Escalating Concerns with, and Closures of, Care Homes Providing Services for Adults statutory guidance 2009.

As this is the “do nothing option”, the Escalating Concerns with, and Closures of, Care Homes Providing Services for Adults statutory guidance 2009 would be retained. This statutory guidance applies only to service providers of adult care homes registered with Care Inspectorate Wales (CIW). It only deals with escalating concerns procedures and the closure of adult care homes.

Option two: Issue a new Code of Practice under the 2014 Act placing requirements on local authorities when exercising their social services functions in relation to quality assurance and performance management, escalating concerns and closure of regulated services. Direct Local Health Boards and NHS trusts in Wales to exercise their functions in accordance with the relevant requirements contained in the Code of Practice (preferred option).

Under this option a new Code of Practice would be issued under the 2014 Act placing requirements on local authorities. The Welsh Ministers will direct Local Health Boards and NHS trusts in Wales to exercise their functions in accordance with the new Code of Practice under powers in the 2006 Act, thereby providing comparable legal force with local authorities.

The Code of Practice is consistent and up to date with current legislation and reflects the ethos of the 2014 Act and the 2016 Act for person-centred care and support, individual voice and control, and continuous improvement.

The Code of Practice will apply to all commissioned regulated care and support services registered with CIW under the 2016 Act. The Code of Practice sets out requirements to ensure consistency at a national level whilst supporting flexibility for local and regional processes.

The Code of Practice provides guidelines and guidance on the quality assurance and performance management of commissioned regulated services, promoting the importance of embedding a culture of continuous learning and improvement. The Code of Practice includes guidelines and guidance on decommissioning services and emphasises the importance of ensuring service continuity to meet people’s care and support needs and support their well-being.

The Code of Practice provides clarity about the role and responsibilities of local authorities, Local Health Boards and NHS trusts in Wales.

7. Costs

Option one: do nothing - retain the Escalating Concerns with, and Closures of, Care Homes Providing Services for Adults statutory guidance 2009.

As this is the “do nothing option” the Escalating Concerns with, and Closures of Care Homes, Providing Services for Adults statutory guidance 2009 would be retained. There are no additional costs associated with this option.

Option two: Issue a new Code of Practice under the 2014 Act placing requirements on local authorities when exercising their social services functions in relation to quality assurance and performance management, escalating concerns and closure of regulated services. Direct Local Health Boards and NHS trusts in Wales to exercise their functions in accordance with the relevant requirements contained in the Code of Practice (preferred option).

Under option two, there will be a cost for local authorities, Local Health Boards and NHS trusts in Wales in terms of staff time for familiarisation with the content of the Code of Practice and to review their policies and procedures. We anticipate this will include Heads of Adult and Children’s Social Services, senior commissioning managers, contract managers, contract monitoring officers, quality assurance leads, and legal and procurement officers. At an organisational level local authorities, Local Health Boards and NHS trusts in Wales will need to review their policies and procedures in order to comply with the requirements of the Code of Practice.

It is estimated that on average (whilst acknowledging the varying capacity and staffing resources across the statutory organisations) it will take approximately 396 hours per statutory organisation, with an estimated staff time cost of £7,260. There are 22 local authorities, seven Local Health Boards, the Joint Commissioning Committee (incorporating any commissioning activity by NHS trusts in Wales) and the Children’s Commissioning Consortium Cymru. This equates to an approximate cost of £236,260 overall to implement the Code of Practice.

There will also be a cost for registered service provider managers and Responsible Individuals in terms of their time for familiarisation with the Code of Practice. The estimated cost is £550 per organisation, refer to the table below:

Occupation	Hourly gross pay (Wales, median, 2024)	Hourly gross pay including on-costs (30%)	Cost for RIs and managers to familiarise themselves with ratings (assumes 10 hours)
H&SS Managers and Directors	£20.87	£27.13	£271.30

Managers and Proprietors in Health and Care Services	£21.45	£27.89	£278.90
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[Earnings and hours worked, region by occupation by four-digit SOC: ASHE Table 15 - Office for National Statistics](#)

The table below states the number of services registered with Care Inspectorate Wales under the 2016 Act as of 23 October 2025.

Service type	Number of services
Adoption Service	6
Adult Placement Service	8
Advocacy Service	2
Boarding School	12
Care Home Service	1424
Adults and Children Without Nursing	19
Adults With Nursing	248
Adults Without Nursing	780
Children's Home	377
Domiciliary Support Service	769
Fostering Service	22
Further Education College	3
LA Adoption Agency	20
LA Fostering Service	22
Residential Family Centre	5
Residential Special School	3
Secure Accommodation Service	1
Special School Residential Service	4
Total	2301

We anticipate the majority of these costs will be offset in the future through clarity of roles and responsibilities, more efficient working practices and minimising duplication. The Code of Practice is not expected to result in any significant changes in working practices and therefore there are no additional ongoing costs for local authorities, Local Health Boards and NHS trusts in Wales.

The resources required for the development of the Code of Practice have already been met through existing resources and are considered sunk costs and can be disregarded. The Code of Practice will be published on the Welsh Government website at no additional cost. The Directions will be published on the NHS management section of the Welsh Government website at no additional cost.

8. Benefits

Option one: do nothing - retain the Escalating Concerns with, and Closures of, Care Homes Providing Services for Adults statutory guidance 2009.

As this is the “do nothing option” the Escalating Concerns with, and Closures of Care Homes, Providing Services for Adults statutory guidance 2009 would be retained. There is a minor benefit in that the statutory guidance is familiar to local authorities, Local Health Boards and NHS trusts in Wales and adult care home providers. However, any benefit is far outweighed by the fact that the guidance is out of date, focuses solely on adult care homes, and does not reflect legislative changes introduced by the 2014 Act and the 2016 Act. The existing guidance only covers escalating concerns and closures of adult care homes.

Option two: Issue a new Code of Practice under the 2014 Act placing requirements on local authorities when exercising their social services functions in relation to quality assurance and performance management, escalating concerns and closure of regulated services. Direct Local Health Boards and NHS trusts in Wales to exercise their functions in accordance with the relevant requirements contained in the Code of Practice (preferred option).

The new Code of Practice will reflect the legislative changes introduced via the 2014 Act and 2016 Act for person-centred care and support, individual voice and control, and continuous improvement. The Code of Practice is intended to be considered alongside *The National Framework for the Commissioning of Care and Support in Wales: Code of Practice* which sets out the principles and standards for commissioning practices.

The Code of Practice has greater reach as it applies to Local Health Boards and NHS trusts in Wales as well as local authorities. The Welsh Ministers will direct Local Health Boards and NHS trusts in Wales to exercise their functions in accordance with relevant requirements in the Code of Practice thereby providing comparable legal force with local authorities. The Code of Practice will apply to all regulated care and support services registered with CIW under the 2016 Act.

The Code of Practice will provide guidance and guidelines to support a consistent approach across Wales whilst enabling flexibility for local and regional processes. Local authorities, Local Health Boards and NHS trusts in Wales will be required to comply with a single Code of Practice as opposed to several different local authority interpretations of the existing statutory guidance. Similarly, a single Code of Practice will provide clarity and certainty for regulated service providers including those operating across different local authority or Local Health Board areas and those providing other regulated services.

The Code of Practice includes guidance and guidelines on the quality assurance and performance management of commissioned regulated services, promoting the importance of embedding a culture of continuous learning and improvement. The Code of Practice sets out requirements, guidelines and guidance to mitigate issues within a service expediently and efficiently prior to reaching the escalating concerns stage.

The Code of Practice includes guidance and guidelines on decommissioning services and emphasises the importance of ensuring continuity of service to meet people's care and support needs and support their well-being. The Code of Practice acknowledges the importance of maintaining the skills, knowledge and experience of staff. The Code of Practice recognises there can be more than one commissioner of a service and supports effective and efficient decommissioning management.

The Code of Practice provides clarity on the roles and responsibilities of commissioners of services, regulated service providers, Care Inspectorate Wales and Social Care Wales. This will contribute towards more efficient working practices and minimise duplication.

9. Risks

Option one: do nothing - retain the Escalating Concerns with, and Closures of, Care Homes Providing Services for Adults statutory guidance 2009

As this is the "do nothing option" the Escalating Concerns with, and Closures of, Care Homes Providing Services for Adults statutory guidance 2009 would be retained. This statutory guidance is out of date and does not reflect the legislative changes introduced through the 2014 Act and 2016 Act. The statutory guidance is not consistent with *The National Framework for the Commissioning of Care and Support in Wales: Code of Practice*.

The scope of the statutory guidance is limited. It does not apply to Local Health Boards and NHS trusts in Wales as commissioners of regulated care and support services. It does not reflect the full range of regulated care and support services for adults and children registered with CIW.

The existing statutory guidance is open to interpretation by individual local authorities, Local Health Boards and NHS trusts in Wales resulting in an inconsistent approach across the sector. Retention of the statutory guidance would mean cross boundary regulated care home service providers are subject to different local processes and terminology according to geographical area.

The statutory guidance provides advice and recommendations specifically for adult care home services from the point of escalating concerns through to the potential closure of a service. This approach does not encourage or support early intervention and improvement, which could help prevent issues intensifying and increasing and avoid unnecessary service closure.

Option two: Issue a new Code of Practice under the 2014 Act placing requirements on local authorities when exercising their social services functions in relation to quality assurance and performance management, escalating concerns and closure of regulated services. Direct Local Health Boards and NHS trusts in Wales to exercise their functions in accordance with the relevant requirements contained in the Code of Practice (preferred option).

There is minimal risk to the introduction of the Code of Practice. The Welsh Government worked with a sector-wide stakeholder group to develop the Code of Practice. A 12-week public consultation was undertaken on the draft Code of Practice between 7 April 2025 and 30 June 2025. A series of awareness raising sessions will be arranged to enable local authorities, Local Health Boards, NHS trusts in Wales, and service providers to become familiar with the detailed requirements of the Code of Practice.

10. Conclusion

Based on an appraisal of the costs, benefits and risks of the two options, option two is the preferred option.

11. Post implementation review

The National Office for Care and Support will monitor the implementation of this Code of Practice and the accompanying Directions under the 2006 Act following their come into force date of 31 March 2026.